

Aspen



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** International Technology Corporation  
**File:** B-233742.2  
**Date:** May 24, 1989

### **DIGEST**

1. Failure of solicitation for fixed-price contract, which includes provision for worldwide installation and maintenance services, to provide sufficient detail to eliminate all performance uncertainties and risks does not render use of the fixed-price format improper or unreasonable, where the solicitation contains sufficient information--agency's best estimate of quantities to be ordered and likely installation sites--for offerors to compete intelligently and on equal terms.
2. General Accounting Office will not object to solicitation requirement for 24-hour repair or replacement of microcomputer workstations deployed world-wide for use in Department of Defense command and communications network where protester fails to demonstrate that the requirement is unreasonable.
3. Contracting agency was not required to further delay procurement of microcomputer workstations to be used in Department of Defense command and control network so as to provide offerors with more time for the development of hardware and software to be demonstrated at required live test demonstration (LTD) where potential offerors were notified of the agency's essential requirements at least 1 year prior to the scheduled LTD, the agency denies that substantial development will be necessary, and a number of offerors successfully completed the LTD with no more than minor discrepancies.
4. Protest that specifications unduly restrict competition is denied where the agency presents reasonable explanations in support of specifications as necessary to meet its minimum needs and the protester fails to show that the specifications are clearly unreasonable; fact that specifications place protester at competitive disadvantage does not render them unreasonable since an agency is not required to cast its procurements in a manner that neutralizes the

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competitive advantages some firms may have over others by virtue of their own particular circumstances.

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## DECISION

International Technology Corporation (ITC) protests the terms of request for proposals (RFP) No. F19628-88-R-0038, issued by the Department of the Air Force for microcomputer workstations for the World-Wide Military Command and Control System's Information System (WIS). ITC alleges that the specifications are either inadequate, impossible to meet, or unduly restrictive of competition.

We deny the protest.

WIS is a world-wide communications network for use by the Department of Defense and other government agencies. The solicitation, issued on September 20, 1988, requests proposals for a 5-year, indefinite-quantity contract to deliver, install, and maintain advanced, reliable computer workstations, and associated software, intended to provide both computer resources for local users and access to WIS. The solicitation requires that the workstations use a multi-tasking operating system--one capable of running several programs simultaneously--that complies with Federal Information Processing Standards (FIPS) Publication 151, "POSIX: Portable Operating System Interface for Computer Environments," and with certain DOD security requirements for processing classified information. Since delivery of the new workstations is scheduled to begin prior to replacement of existing Honeywell mainframe computers in the system, the new workstations also must emulate Honeywell Visual Information Presentation (VIP) terminals to permit communication with the Honeywell mainframes.

ITC and several other offerors submitted proposals by the amended December 1 closing date for receipt of initial proposals. Prior to the closing date, however, ITC filed an initial protest with our Office challenging certain solicitation requirements. Subsequently, on December 16, the Air Force issued revisions to the demonstration scripts previously provided to offerors on October 13 for use in a required live test demonstration (LTD) of proposed workstations, and ITC protested these revisions. In January 1989, offerors other than ITC underwent the required LTD.

## INSTALLATION AND MAINTENANCE REQUIREMENTS

ITC first questions the solicitation requirements for shipping, installation, warranty, maintenance, and training.

These provisions divide the world into eight geographic areas--Continental United States, Hawaii and Alaska, South America, Europe, Asia, Africa, Australia and Antarctica--and require offerors to propose fixed unit prices for each geographic area for delivery (included in purchase price), installation, warranty and maintenance. With respect to maintenance, the solicitation requires that all failed products be repaired or replaced within 24 hours of initial notification of failure. Although the solicitation contemplates an indefinite-quantity contract and does not specify when and how many workstations will be ordered and where they are to be installed and maintained, it does set forth the agency's estimate of the overall number of workstations to be ordered each quarter, the maximum order limitation per quarter, and an overall minimum dollar value to be ordered. The agency also made available to offerors a list of the unclassified sites where WIS terminals are currently installed; according to the agency, this represents their best estimate of the sites where the new generation of workstations will be installed.

ITC argues that the failure to definitively specify the sites at which the new WIS workstations will be installed renders unreasonable the requirement that offerors propose fixed prices for shipping, installation, warranty, maintenance, and training, since travel and support costs can vary significantly within the large geographic areas specified in the solicitation, and it is therefore not possible to estimate in advance the costs of providing these services. As an alternative, ITC proposes contractor payment at least in part on a cost-reimbursement basis. ITC further argues that the agency's approach confers a competitive advantage on Zenith Data Systems, Inc., as a result of its having acquired information on the distribution of existing WIS terminals while performing another contract. Finally, ITC argues that the difficulties of travel from country to country within a given geographic area renders it unreasonable to require repair within 24 hours; instead, ITC proposes that maintenance facilities be established to which failed units can be sent.

The fact that a solicitation for a fixed-price, indefinite-quantity service contract may not provide sufficient detail to eliminate all performance uncertainties and risks does not render the solicitation improper where it nevertheless contains sufficient information for offerors to compete intelligently and on equal terms. While solicitations for indefinite-quantity contracts must contain estimates of probable requirements, these estimates need not be precise; rather, such estimates are unobjectionable so long as they were established in good faith based on the best information

available. See Creative Management Technology, Inc., B-233330, Feb. 28, 1989, 89-1 CPD ¶ 217; Jewett-Cameron Lumber Corp., et al., B-229582 et al., Mar. 15, 1988, 88-1 CPD ¶ 265; Duroyd Mfg Co., B-213046, Dec. 27, 1983, 84-1 CPD ¶ 28.

The Air Force states, and there is nothing in the record to the contrary, that the list of the current WIS sites provided to offerors represents the best information it has available concerning the future placement of the workstations; ITC has not shown that the information was not developed in good faith. See Jewett-Cameron Lumber Corp., et al., B-229582 et al., supra. We think the list, as the best estimate of where the new workstations will be installed, provided a basis for offerors intelligently to estimate the probable cost of delivery, installation, training and maintenance. Together with the Air Force's estimate of the likely distribution of workstations by geographic area (approximately 66 percent of the units will be installed in the Continental United States, 24 percent in Europe, and only 10 percent elsewhere, including 4 percent in Alaska and Hawaii), this list provides offerors with a reasonable indication of what to expect under the contract; to the extent that some unknown aspects of performance remain, offerors are free to propose pricing that covers the risk that such aspects may involve higher costs. Again, the agency is not required to eliminate all risk to the contractor. We note that a number of firms apparently agree with the Air Force that it is possible to use this information to intelligently prepare a proposal in response to the solicitation since, without protest, they have submitted proposals offering the required services at fixed prices. We note that this information also served to eliminate any advantage Zenith may have gained from the knowledge it acquired from its prior contract as to the current distribution of WIS terminals.

ITC also has not established that the requirement for repair or replacement within 24 hours is unreasonable or otherwise objectionable. The WIS workstations will be an integral element of a command and control network to be used during crises, as well as during peace-time. The 24-hour maintenance requirement is consistent with the maintenance requirements considered necessary for other WIS components; for example, a contract for WIS products awarded to International Business Machines Corporation (IBM) requires the contractor not only to repair or replace all defective units within 24 hours of notice, but also that 25 percent of maintenance jobs be completed within 4 hours. As additional evidence that the 24-hour requirement is practicable, a number of offerors have responded to this solicitation,

proposing to meet the maintenance requirements by means of their own service organizations and/or through subcontracts with independent service organizations. Given these considerations, we have no basis to object to the 24-hour maintenance requirement. The mere fact that ITC cannot meet the requirement does not render it overly restrictive of competition; the government properly, may impose reasonable conditions even though they may cause the competition to be somewhat restricted. Alan Scott Industries, B-230773, June 10, 1988, 88-1 CPD ¶ 555.

With respect to ITC's suggested alternative of sending defective units to regional service centers, the agency reports that since the workstations will handle classified information, security considerations make impracticable their removal from an installation for repair. The agency suggests instead that storing spare workstations at selected sites would be one means by which the 24-hour requirement could be met.

#### REQUIRED DEVELOPMENT EFFORT

While ITC does not dispute the Air Force's need for a multi-tasking operating system that is compliant with the FIPS POSIX standard, runs VIP emulation software (to be able to communicate with the existing Honeywell mainframe computers), and offers a secure operating environment, it maintains that meeting these requirements will entail a considerable effort in developing and modifying existing commercial hardware and software, the cost for which will not be reimbursed. ITC contends that this development effort also is inconsistent with the solicitation requirement for non-developmental items (NDI), defined in the RFP as an item available for sale that requires no additional design or development to meet required specifications, and which has generated meaningful reliability, supportability and maintenance data through substantial use. ITC requests a delay in the procurement to permit offerors to complete development in time for the LTD and asks that the solicitation be amended to provide for the contractor to be reimbursed the development costs. In addition, the protester points out that both IBM and the Air Force itself have developed VIP emulator programs to run on the WIS system, and it requests that the agency make them available to offerors.

Preliminarily, the Air Force maintains, and we must agree, that read as whole the solicitation in fact does not require all hardware and software to be NDI. While the workstation specification states that the Air Force's intent is to upgrade the system "primarily" through NDI

hardware and software, an attachment to the RFP containing the contracting officer's response to comments on the draft RFP stated that:

"The NDI requirements, as contained in the specification, state that the workstation and associated hardware and software must be based on NDI components, however, specification requirements are to be satisfied first and foremost (using NDI products where possible), regardless of the proposed product's NDI status. The requirement for performing the demonstrations . . . must also be met, regardless of the product's NDI status. The intent of the NDI requirement is to avoid large scale WIS-specific development efforts. The requirement is not designed to absolutely rule out all products that do not meet the NDI definition, but rather to minimize (if not eliminate) development . . . . Offering of non-NDI equipment must be supported by a clear explanation of how the proposed equipment will be made available in time to meet the initial delivery requirements (30 days after contract award)."

Further, in a subsequent October 18 letter sent to all offerors, the contracting officer eliminated any vestige of the restrictions on offering non-NDI products, stating that:

"Non-NDI products will be treated no differently than NDI products as far as the product evaluation is concerned as long as the offeror can provide sufficient evidence to assure the Government that the offeror will be able to meet the initial delivery requirements for these non-NDI products."

Since this statement was set forth in a writing that was signed by the contracting officer and sent to all offerors, it had the effect of a solicitation amendment. Automation Management Consultants, Inc., B-231986, Nov. 21, 1988, 68 Comp. Gen. \_\_\_, 88-2 CPD ¶ 494.

The Air Force does not agree, on the other hand, that a substantial developmental effort should be required to satisfy the RFP requirements; it maintains that solicitation compliance can be attained through modification of commercially-available software. In this connection, the Air Force reports that most of the offerors who underwent the LTD in January of 1989 either successfully demonstrated that their proposed workstation met the requirements for a secure, multi-tasking operating system with VIP emulation

capability, or demonstrated a workstation that essentially met these requirements, displaying only minor, easily resolvable discrepancies in their systems' VIP emulation capability.

In light of this information, we find no merit in ITC's argument that the Air Force was required to further delay the procurement of this integral element of DOD's command and control network to provide more time for the development of the hardware and software to be demonstrated at the LTD. Potential offerors apparently were notified of the agency's minimum needs at least as early as December 1987; the Air Force states that the draft RFP circulated to industry for comments at that time already essentially included the requirements for a secure, multi-tasking operating system with a VIP emulation capability. ITC simply has presented no persuasive evidence that the time provided to assemble a system for proposal was inadequate for offerors generally. Again, as is the case with solicitation requirements generally, the fact that ITC was unable to meet the requirements within the deadlines established by the Air Force does not render the deadlines improper or unreasonable, at least where, as here, other offerors were able to meet those deadlines. Alan Scott Industries, B-230773, supra.

ITC argues that the December 16, 1988 changes to the LTD scripts further warranted a delay in the LTD because the cover sheet to the revised scripts stated that "all of the attached scripts are to be run using the proposed secure operating system"; ITC contends that this was a new requirement, pointing out that an attachment to the solicitation as issued provided that only the "basic security features" would be tested during the LTD.

We find, however, that the solicitation as issued already placed ITC on notice that the Air Force might require the LTD to be run using a secure operating system. In view of the general solicitation requirement for a secure operating system and for offerors to demonstrate at the LTD the hardware and software they were proposing, and given the statement in the September 26 addendum that the basic security features would be tested during the LTD, ITC could not reasonably assume that the software would not be run under secure operating conditions. While the statement in the addendum advised offerors that they would not need to demonstrate the more advanced security features at the LTD, it did not provide any basis for assuming that offerors would not need to demonstrate an operating system with basic security features. (ITC also asserts that there were other substantial and material changes to the LTD, but the

Air Force characterizes the revisions as mere clarifications, corrections, or relaxations of the LTD requirements, and ITC has failed to cite any specific examples to support its position.)

With respect to ITC's request that the solicitation be amended to provide for reimbursement of the contractor's development costs, again, we find no basis to question solicitation on a fixed-price basis here; where a fixed-price format is used, an offeror should take into consideration its likely development costs when calculating its proposed price.

We also find no basis to question the Air Force's failure to furnish the commercial VIP emulator program modified by IBM or the program written by agency personnel. The Air Force reports that it did not furnish the IBM program because it is proprietary software to which the agency does not have unlimited rights. As for the agency program, the Air Force reports that it is undocumented and is structured so as to run only on the computer for which it was written; moreover, according to the agency, this program includes no relevant VIP emulation capabilities not also found in commercially-available VIP emulator programs. In this regard, we note that the offerors who underwent the LTD all demonstrated commercially-available VIP emulator programs that either met the relevant solicitation requirements or displayed no more than minor, easily resolvable deviations from the requirements. Accordingly, it does not appear that the failure to furnish a VIP emulator program deprived offerors of a meaningful opportunity to compete or otherwise was improper.

#### COMPETITIVE ADVANTAGE

ITC alleges that two solicitation provisions confer an unfair competitive advantage on Zenith. The specification described two workstations--a less powerful "basic" system and a more powerful "target" system. Offerors were only required to offer the target system; if they chose to offer a basic system as well, then the specification required that the architecture of the basic system be such that it could be transformed into a system that provides the capabilities required of the target workstation. The solicitation also required that the memory system of the workstation support the use of error checking and correction (ECC) circuitry for dealing with memory failures (although the solicitation subsequently was amended to permit offerors to propose either ECC circuitry or to demonstrate that the proposed memory system is sufficiently reliable that the additional expense of ECC circuitry is not warranted). ITC complains that these requirements are advantageous to Zenith because

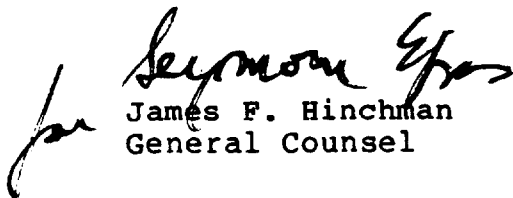


Zenith allegedly is the only company that has introduced a powerful microcomputer that not only provides for a multi-tasking operating system, but also offers ECC circuitry and is easily upgradeable to a target system.

The Air Force reports that its ultimate requirement is for deploying target workstations at all sites, but that it offered the option of also proposing a basic workstation because it was unclear whether it would be more cost-effective to purchase larger quantities of the target workstation, or to purchase less expensive basic workstations for those sites that do not immediately require the additional capabilities of the target system and then offer an upgrade kit to provide target system capabilities. With respect to the solicitation requirement for memory reliability, the agency states that compliance with the TEMPEST standard on the emission of electromagnetic radiation, as required in the solicitation, usually results in an increase in the operating temperature within a workstation, which adversely affects memory reliability and therefore necessitates safeguards in this respect. Although ECC circuitry is the traditional solution to this problem, the agency states that it permitted offerors to propose a more reliable memory as a less-expensive alternative in response to the requests of potential offerors. The Air Force denies that only Zenith workstations can meet the solicitation requirements and in fact most of the offerors participating in the LTD did not propose a Zenith system.

We find that the Air Force has reasonably established its need for the upgrade and memory correction/reliability requirements, and ITC has submitted no evidence that would lead us to question the specification in this regard. Even if the requirements in fact placed ITC at a competitive disadvantage, this does not render them unreasonable, since an agency is not required to cast its procurements in a manner that neutralizes competitive advantages, such as the one in issue, that some firms may have over others by virtue of their own particular circumstances. Canon U.S.A., Inc., B-232262, Nov. 30, 1988, 88-2 CPD ¶ 538.

The protest is denied.

  
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General Counsel